

Facts About

Workers' compensation coverage for construction contractors



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Employers: When you hire a construction contractor, are you required to provide workers' compensation coverage? In some situations, the answer is yes. The fact that contractors register with the Department of Labor and Industries doesn't automatically exempt them from coverage.

Construction contractors: How do you know whether you or your subcontractor is covered or exempt?

This fact sheet is intended as a guide to employers and contractors to help determine industrial insurance (workers' compensation) requirements. The issue is complex. Labor and Industries looks at a number of factors.

Firm Responsible for Coverage

A firm (or individual) that directs or controls the contractor's work will likely be responsible for providing mandatory workers' compensation coverage. **This is true even if the firm simply has the right** to control the contractor. Examples indicating control include:

- The firm directs the contractor in how the work is to be done.
- The firm provides training to the contractor.
- The firm sets the hours of work for the contractor.
- Two or more contractors perform the same type of work for the firm.
- The contractor is paid by the hour.
- The firm provides necessary tools or equipment to the contractor.

On the other hand, the firm (or individual) may simply specify the date by which work must be completed. By itself, this is not considered a sufficient degree of control to consider the contractor a covered worker.

Contractor Exempt from Coverage

The department uses several tests to determine if a contractor is covered by workers' compensation. The tests are described in RCWs 51.08.180 and 51.08.195. If any of the following four tests are passed, the firm (or individual) is NOT likely to be responsible for providing the contractor's workers' compensation coverage because the contractor is exempt from coverage.

1. The contractor provides labor other than his or her own. (This constitutes an employer-employee relationship on the part of the contractor, so it is the contractor's responsibility to provide workers' compensation coverage for his or her employees.)

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2. The contractor provides major equipment, and his/her activities in the use of this equipment are not directly controlled by the firm. Equipment is considered to be more than hand tools. Examples include a dump truck, backhoe, grader, etc. (*Note:* Supplying the **material** required on a job does not exempt a contractor from coverage.)
 3. When a contractor only provides his or her personal labor, and he or she is not controlled by the hiring firm or individual, the contractor is generally considered to be exempt from mandatory coverage if all five of the following conditions are met:
 - The work performed is in the building trades, and
 - The contractor has obtained a contractor's license, and
 - The contractor has his or her own principal place of business which is eligible for a business deduction with the IRS, and
 - The contractor keeps a separate set of records for business income and expenses, and
 - The work is being performed for a firm (or individual) which also has a contractor's license.
 4. When a contractor only provides his or her personal labor, the contractor is generally considered to be exempt from mandatory coverage if all six of the following conditions are met:
 - The contractor is free from control. The firm (or individual) for whom the contractor works does not supervise the methods or details of the work or set the work hours and has no right to exercise such control, and
 - The service is outside the usual course of the employer's business, **or** the services are performed outside of all places of the employer's business, **or** the contractor supplies the principal place of business from which the work is performed, and
 - The contractor has their own business. For example: The contractor is registered with L&I as a contractor; the contractor has other clients; the contractor has a significant investment in the business (such as equipment); the contractor advertises to the public; the contractor had an active business prior to the current contract; the contractor could suffer a loss in performing the contract, **or** the contractor has his or her own principal place of business which is eligible for a business deduction with the IRS, and
 - The contractor is considered to be an independent contractor by the IRS (and not an employee), and
 - The contractor has an active account with the Department of Revenue, and
 - The contractor keeps a separate set of records for business income and expenses.

All of the conditions of either number 3 or number 4 must be met for a contractor to be exempt when supplying only personal labor. In determining whether a contractor is exempt from mandatory coverage, L&I considers not only the contract language but also how the contractor and firm (or individual) actually operate.

For more information, please call (360)902-4752, or call L&I toll free at 1-800-LISTENS (547-8367).

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